

# ***HOUSE STATE AFFAIRS COMMITTEE***

## ***ADMINISTRATIVE RULES REVIEW***

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# **STATE AFFAIRS COMMITTEE**

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.04.01 - RULES GOVERNING HORSE RACING**

**DOCKET NO. 11-0401-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 27 through 30.**

**Implement controlled substance and alcohol testing to protect the integrity of horseracing in the state.**

**FEE SUMMARY:** The following a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O Baker, telephone: 208-884-7080.

DATED this 26th of August, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is September 13, 2005.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, Idaho Code.

# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0601**  
**PENDING RULE**

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**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose to the proposed rulemaking:

**Implement controlled substance and alcohol testing to protect the integrity of horse racing in the state.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and 67-5226(1)(c), Idaho Code the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**Necessary to protect the public health, safety and welfare and confers a benefit. Implementation of controlled substance and alcohol testing would protect the integrity of horseracing in the state, protect the health and welfare of all licensees, employees, and applicants involved in the horse racing industry; foster fairness of competition; and enhance the integrity of the industry as viewed by the racing public.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS AND WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700, Meridian, ID 83680-0700  
(208) 884-7050 / (208) 884-7090 (FAX)

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0601**  
**PENDING RULE**

## **041. CONTROLLED SUBSTANCE TESTING OF LICENSEES, EMPLOYEES, AND APPLICANTS: PRIMARY PURPOSE.**

In order to protect the integrity of horse racing in the state of Idaho, to protect the health and welfare of licensees, employees, and applicants engaged in horse racing within the state of Idaho, to prevent exploitation of the public, licensees, employees, and applicants engaged in horse racing in the state of Idaho, to foster fairness of competition within the racing industry and in order to protect public safety within the state of Idaho, the commission intends to regulate at all race meets licensed by it and the use of any controlled substance and alcohol. (9-13-05)T

## **042. DEFINITIONS.**

**01. Licensee, Employee, or Applicant.** For the purposes of this Section (042), “licensee,” “employee,” or “applicant” is any person who is licensed by or employed by the commission within the state of Idaho, or an applicant for a license by the commission within the state of Idaho. (9-13-05)T

**02. Suspension.** Means prevention from conducting the activities permitted or authorized by a license or prevention of an applicant from obtaining a license. “Suspension” is to be interpreted as a temporary remedial measure designed to protect the safety and integrity of the horse racing industry and the participants therein and is not to be considered punitive. (9-13-05)T

**03. Sample.** Means a urine sample collected for the purpose of drug testing, or a blood, breath, or saliva sample collected for the purpose of alcohol testing. (9-13-05)T

**04. Reasonable Suspicion.** Means that a licensee’s, employee’s, or applicant’s (as the terms are defined in Subsection 042.01) behavior or pattern of behavior indicates that the licensee, employee, or applicant is under the influence of a controlled substance or alcohol. The basis of the suspicion may be a specific, contemporaneous event or conduct that has been observed over a period of time. (9-13-05)T

**05. Alcohol.** Means the intoxicating agent in beer, wine, or liquor, as the terms are defined in Title 23, Idaho Code, and includes ethyl, methyl, and isopropyl alcohols. (9-13-05)T

**06. Medical Review Officer (MRO).** Means a licensed physician who is responsible for reviewing laboratory results and who has been certified by a nationally recognized MRO association as having knowledge of substance abuse disorders and medical training to interpret and evaluate a positive test result as it relates to the medical history of the person in question. (9-13-05)T

**07. A Controlled Substance.** Means a drug, substance, or immediate precursor in schedules I through V of Article II of Title 37, Chapter 27, Idaho Code. (9-13-05)T

## **043. USE OF CONTROLLED SUBSTANCES.**

No licensee, employee, or applicant shall have within their body any unauthorized controlled substance while within the enclosure of or on the premises managed by any association or the commission. (9-13-05)T

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0601**  
**PENDING RULE**

**044. TESTING.**

The board of stewards of the commission, or the commission acting through the executive director, will require any licensee, employee, or applicant to provide blood, urine, or saliva samples for the purpose of drug analysis under any of the following circumstances: (9-13-05)T

**01. Physical Examination.** As part of a physical examination, as described in Subsection 300.01 of these rules, as close as practicable prior to the testee's participation in his first race meeting of a calendar year. (9-13-05)T

**02. Reasonable Suspicion.** When the board of stewards finds that there is reasonable suspicion to believe that the proposed testee has used any controlled substance. (9-13-05)T

**045. POST-ACCIDENT TESTING.**

Post-accident controlled substance or alcohol testing of all licensees, employees, or applicants who are involved in a racing or job-related accident on the track or on association grounds that requires treatment away from the scene of the accident will be conducted, unless it is clearly evident in the judgment of the stewards by the circumstances of the accident that the licensee's, employee's or applicant's injury was caused by the actions of another and that there was no unsafe act on the part of the injured licensee, employee, or applicant. (9-13-05)T

**046. REFUSAL TO TEST.**

**01. Refusal to Supply a Sample.** When any licensee, employee, or applicant is requested to submit to a drug test in a manner prescribed in these rules, the person shall do so in a prompt manner. Refusal to supply such sample shall result in: (9-13-05)T

**a.** The immediate suspension of the licensee, employee, or applicant; (9-13-05)T

**b.** A hearing before the board of stewards in accordance with Subsection 180.24 of these rules. (9-13-05)T

**c.** Service shall be to the licensee, employee, or applicant personally by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mailing the notice to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing. (9-13-05)T

**02. Suspended from Racing for Refusal to Test.** If the board of stewards finds at the hearing that said refusal to test occurred, the licensee, employee, or applicant shall be suspended from racing for seven (7) calendar days and be subject to random testing for one (1) year. In the event of a finding of just cause the licensee, employee, or applicant must submit to a test immediately once the conditions which justly prevented testing abate or can be eliminated. (9-13-05)T

**03. Subject to Random Testing.** In the event a licensee, employee, or applicant refuses to test when requested after previously refusing to test or previously testing positive for drugs, that licensee, employee, or applicant shall be suspended from racing for a period of ninety (90) calendar days and subject to random testing for a period of one (1) year. (9-13-05)T

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0601**  
**PENDING RULE**

## **047. TESTING PROCEDURE.**

**01. Accordance With Established Procedures.** Testing shall be done in accordance with established medical and law enforcement procedures. (9-13-05)T

**02. Retesting.** The sample may be retested at the request of the licensee, employee, or applicant at either the laboratory used by the commission or a separate laboratory selected from a list provided by the commission. The licensee, employee, or applicant is responsible for all costs associated with the retesting of the sample. (9-13-05)T

## **048. RIGHT OF LICENSEE, EMPLOYEE OR APPLICANT TO EXPLAIN A POSITIVE TEST RESULT - MRO.**

Any licensee, employee, or applicant who tests positive for a controlled substance must be given written notice by the commission of that test result, including the type of drug involved. Thereafter, the commission may not take final disciplinary action against the licensee, employee or applicant for testing positive for a controlled substance until that licensee, employee or applicant has had an opportunity to discuss the positive test result with an MRO and provide a reasonable explanation for his positive test. An MRO may designate members of his staff to make initial contact with the donor to facilitate the consultation process. (9-13-05)T

## **049. A POSITIVE TEST.**

On receiving written notice from the MRO that a sample has been found positive for a controlled substance, the presiding steward shall initiate the following procedure: (9-13-05)T

**01. Written Notice.** Written notice shall be given to the licensee, employee or applicant setting a hearing by the board of stewards in accordance with Section 047 of these rules within the next two (2) racing days or seven (7) calendar days, whichever is less, after service of the notice. The hearing may be held within a shorter or longer period of time if the licensee, employee, or applicant named and the board of stewards agree. Service shall be to the licensee, employee, or applicant personally by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mail to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing. (9-13-05)T

**02. Opportunity for Explanation.** The hearing shall be conducted before the board of stewards pursuant to Section 047 of these rules. At the hearing, the licensee, employee, or applicant shall be provided an opportunity to explain the positive test. (9-13-05)T

**03. Confidentiality.** The board of steward's hearing shall be closed and the facts therein will be kept confidential unless for use with respect to any subsequent contested hearing or order by the commission or judicial hearing with regard to such facts. Closure of the hearing and confidentiality of the proceedings may be waived by the licensee, employee, or applicant. The board may issue a public ruling which complies with the confidentiality requirements of this chapter and Subsection 180.24 of these rules. (9-13-05)T

**04. Lacking Satisfactory Explanation.** Lacking a satisfactory explanation and documentation or upon the licensee, employee, or applicant agreeing with the test results, the board of stewards shall suspend the licensee, employee, or applicant. (9-13-05)T

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0601**  
**PENDING RULE**

## **050. PROCEDURES FOLLOWING A POSITIVE CHEMICAL ANALYSIS.**

**01. First Positive Test.** For a licensee's, employee, or applicant's first positive drug test he shall not be allowed to participate in racing for seven (7) calendar days and until such time as he has received a substance abuse evaluation and has begun the recommended rehabilitation program. Additionally, the licensee, employee or applicant will be subject to random testing for a period of one (1) year from the date the positive sample was taken. (9-13-05)T

**02. After Evaluation.** After such evaluation, but not before the tolling of the seven (7) calendar days awarded in Subsection 050.01 of these rules, if said licensee's, employee's or applicant's condition proves non-addictive and not detrimental to the best interest of racing, said licensee, employee, or applicant shall be allowed to participate in racing provided he can produce a negative test result from a laboratory approved by the commission and agrees to further testing at the discretion of the Stewards or designated Racing commission representative to insure his unimpairment. (9-13-05)T

**03. Second Violation.** For a licensee's, employee's or applicant's second violation, he shall be suspended for ninety (90) consecutive days and until he provides the Stewards with documentation that he has enrolled and is progressing satisfactorily in a certified drug rehabilitation program approved by the commission. (9-13-05)T

**04. Third Violation.** For a licensee's, employee's or applicant's third violation, he shall be suspended and the case referred to the Commission for consideration of revocation of the individual's license. (9-13-05)T

## **051. CONFIDENTIALITY OF TEST RESULTS.**

All test results shall be obtained as part of an inquiry into a person's fitness to be granted or to retain a license and shall be exempt from public disclosure pursuant to Section 9-304C, Idaho Code. A statistical summary shall be made available annually. (9-13-05)T

## **052. CONSUMPTION OF ALCOHOL.**

Any jockey, starter, assistant starter, pony person, outrider, or racing official shall not have present within his body any amount of alcohol while participating in any horse race held that day. (9-13-05)T

## **053. TESTING EXPENSE.**

Except for retesting requested by a licensee, employee, or applicant, all testing ordered pursuant to this chapter, whether blood, urine, or breath, shall be at the expense of the commission. All expense of drug or alcohol evaluation, treatment, reports, and fees shall be at the expense of the licensee, employee, or applicant undergoing such evaluation or treatment. (9-13-05)T

**04454. -- 059. (RESERVED).**

# **STATE AFFAIRS COMMITTEE**

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.04.01 RULES GOVERNING HORSE RACING**

**DOCKET NO. 11-0401-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 31 and 36.**

Rules define and establish the recognized horsemen's group and alternate horsemen's groups.

**FEE SUMMARY:** The following a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker, telephone 208-884-7080

DATED this 4th day of August, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated regular rulemaking procedures. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.



# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0602**  
**PENDING RULE**

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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose to the proposed rulemaking:

**Rules are to define and establish the recognized horsemen's group and alternate horsemen's groups.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no fee or charge being imposed through this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking.

There is no impact to the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7050  
(208) 884-7090 (FAX)

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0602**  
**PENDING RULE**

**004. OFFICE -- OFFICE HOURS -- STREET ADDRESS -- MAILING ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Address.** The place of business of the Idaho State Racing Commission is in Meridian, Idaho. The office is located at 700 S. Stratford Drive, Meridian, Idaho and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. ( )

**02. Mailing Address.** The mailing address is: Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho, 83680-0700. ( )

**03. Telephone and Fax.** The telephone of the office is (208) 884-7080. The facsimile number of the office is (208) 884-7098. The Racing Commission website is <http://www.isp.state.id.us/race>. ( )

**005. PUBLIC RECORDS COMPLIANCE AND AVAILABILITY.**

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. Public records are available during normal working hours for inspection and copying at the Idaho State Racing Commission Officer, 700 South Stratford Drive, Meridian, ID 83680-0700. ( )

**006. GENERAL JURISDICTION.**

Simulcasting of Races within the State. The Idaho State Racing Commission shall have general jurisdiction over the simulcasting of horse and greyhound races within the state, and the Commission may issue rules in accordance with the provision of this article as provided for in Idaho Statutes. ( )

**007. -- 008. (RESERVED).**

**0042. DEFINITIONS.**

**01. Age of a Horse.** The age of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled. (7-1-93)

**02. Arrears.** All monies due for entrance fees (including Jockey's fees), forfeitures, subscriptions, stake, purchase money in claiming races, and also any purchase money in claiming races, and also any default in money incidental to the Rules. (7-1-93)

**03. Association.** Any person or persons, Associations, district or county fair boards or corporations licensed by the Commission to conduct racing. (7-1-93)

**04. Authorized Agent.** A person appointed by a written instrument signed and acknowledged before a notary public by the owner and filed in accordance with the Rules. (7-1-93)

**05. Bleeder.** Any horse known to have bled from its nostrils during a workout or race, and so designated by the Commission Veterinarian. (7-1-93)

**06. Breeder.** Breeder of a horse is determined by the definition of breeder used by the

# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE**  
**Rules Governing Horse Racing****Docket No. 11-0401-0602**  
**PENDING RULE**

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registry of the particular breed of that horse. (7-1-93)

**07. Calendar Day.** Twenty-four (24) hours ending at midnight. (7-1-93)

**08. Chemical.** A substance composed of chemical elements or obtained by chemical processes. (7-1-93)

**09. Claiming Race.** A race in which any horse entered therein may be claimed in conformity with the rules. (7-1-93)

**10. Commission.** The Idaho State Racing Commission. (7-1-93)

**11. Declaration.** The act of withdrawing an entered horse from a race before the closing of overnight entries. (7-1-93)

**12. Drug.** Any chemical compound or any noninfectious biological substance not used for its mechanical properties, which may be administered to or used on or for patients, either human or animal, as an aid in diagnosis, treatment or prevention of disease or other abnormal condition, for the relief of pain or suffering, or to control or improve any physiological or pathological condition. See Subsection 004.45 for Prescription Drug definition. (7-1-93)

**13. Entry.** Shall mean, according to the requirements of the text: (7-1-93)

**a.** A horse made eligible to run a race. (7-1-93)

**b.** Two (2) or more horses which are entered or run in a race and are coupled because of common ties or ownership. Where two (2) or more horses owned by separate owners but trained by the same Trainer are entered in the same race, the horses may run as separate betting interests. (7-1-93)

**14. Equipment.** As applied to a horse shall mean whips, blinkers, tongue straps, muzzle, nosebands, bits, shadow rolls, martingales, breast plate, bandages, boots, hoods, flipping halters, goggles and plates. (7-1-93)

**15. Forfeit.** Money due because of an error fault, neglect of duty, breach of contract or a penalty. (7-1-93)

**16. Free Handicap.** A handicap in which no liability for entrance money is incurred. (7-1-93)

**17. Grounds.** Any area owned or leased by any licensed Association, Corporation or Race Track which is operated for the purpose of conducting pari-mutuel racing. (7-1-93)

**18. Handicap.** A weight adjustment for entered horses for the purpose of equalizing the respective chances of winning. (7-1-93)

**19. Highweight Handicap.** A weight adjustment to the top horse in the handicap of

# STATE AFFAIRS COMMITTEE

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## IDAHO STATE POLICE Rules Governing Horse Racing

Docket No. 11-0401-0602  
PENDING RULE

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not less than one hundred and forty (140) pounds. (7-1-93)

**20. Horse.** Includes filly, mare, colt, horse and gelding in general; when referring to sex, a filly becomes a mare when five (5) years old; a horse is an entire male when five (5) years old or older. (7-1-93)

**21. Horsemen's Group.** An organization composed of licensed owners and/or trainers duly registered with the Secretary of State and recognized by the Idaho State Racing Commission.  
( )

**242. Idaho Bred.** A foal dropped by a mare in Idaho. (7-1-93)

**223. Jockey.** A race rider, whether a licensed Jockey, apprentice, or amateur. (7-1-93)

**234. Maiden.** A horse that has never won a race on the flat in a state or country where racing is supervised by a legalized Racing Commission or board and where the races are covered by the Racing Form, American Quarter Horse chart books, the Appaloosa Horse Club chart books, the Paint Horse chart books and the Arabian Horse chart books. A maiden which has been disqualified after finishing first still is a maiden. (7-1-93)

**245. Match.** A Private Sweepstakes between two (2) horses. (7-1-93)

**256. Meeting.** The entire consecutive period for which a license to race has been granted to any one (1) association by the Commission. (7-1-93)

**267. Mixed Race.** A race between horses of different breeds. (7-1-93)

**278. Month.** A calendar month. (7-1-93)

**289. Nominator.** A person in whose name a horse is entered for a race. (7-1-93)

**2930. Optional Claiming Race.** A race restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less. (7-1-93)

**301. Owner.** Includes the owner, part owner and lessee of any horse. An interest only in the earnings of a horse does not constitute ownership. In case of husband and wife, it is presumed that joint ownership exists. (7-1-93)

**342. Owner's Handicap.** A race wherein the owner fixes, at the time of entry, the weight to be assigned the entered horse. (7-1-93)

**323. Place.** Shall mean first, second or third and in that order is called "Win," "Place," and "Show". (7-1-93)

**334. Post Position.** The starting position assigned. (7-1-93)

**345. Post Time.** The time set for the arrival at the starting point. (7-1-93)

# STATE AFFAIRS COMMITTEE

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## IDAHO STATE POLICE Rules Governing Horse Racing

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**Docket No. 11-0401-0602**  
**PENDING RULE**

- 356. Prescription Drug.** (7-1-93)
- a.** A drug which under federal law is required prior to being dispensed or delivered to be labeled with either of the following statements: (7-1-93)
- i.** “Caution: Federal law prohibits dispensing without a prescription”; or (7-1-93)
- ii.** “Caution: Federal law restricts this drug to be used by or on the order of a licensed Veterinarian.” (7-1-93)
- b.** Or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioner only. (7-1-93)
- 367. Produce Race or Futurity.** A race for younger horses, usually two (2) year olds, in which entries are made a considerable time before the running of the race, often before the entered horse is born. (7-1-93)
- 378. Purse Race.** A race for money or any other prize to which the owners of the horses do not contribute. (7-1-93)
- 389. Race.** A contest between horses for purse, stake or reward on any licensed race track and in the presence of a Judge or Judges. (7-1-93)
- 3940. Race Day.** Any period of twenty-four (24) hours beginning at midnight and included in the period of a race meeting and in the matter of penalties the word “DAY” means a “CALENDAR DAY”. (7-1-93)
- 401. Recognized Meeting.** Any meeting wherever held, which is under the jurisdiction of the Idaho State Racing Commission. The Commission shall recognize all meetings conducted under the jurisdiction of members of the National Association of State Racing Commissioners, or associate members or state and other recognized authority. (7-1-93)
- 412. Ringer.** In addition to the definitions expressed in the Rules, shall mean any horse which runs under the name and identity of another or under a fictitious name. (7-1-93)
- 423. Rules.** The “Rules Governing Horse Racing” herein and any amendments or additions thereto. (7-1-93)
- 434. Scratch.** The act of withdrawing an entered horse from the race after closing of overnight entries. (7-1-93)
- 445. Scratch Time.** The time set by the Association for the closing of applications for permission to withdraw from the races of that day. (7-1-93)
- 456. Stake Race or Sweepstakes.** A race to which nominators of the engaged entries contribute to a purse; to which money, or any other award, may be added; but no overnight race, regardless of its conditions, shall be deemed a stake race. (7-1-93)

# STATE AFFAIRS COMMITTEE

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## IDAHO STATE POLICE Rules Governing Horse Racing

Docket No. 11-0401-0602  
**PENDING RULE**

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- 467. Starter.** (7-1-93)
- a.** The individual approved to dispatch the horses in a race. (7-1-93)
- b.** The horse is a “starter” for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses. (7-1-93)
- 478. Starter Allowance Race.** A race whereby eligibility for the conditions of said race. A horse when claimed shall reestablish eligibility. (7-1-93)
- 489. Stewards.** The Stewards of the meeting or their duly appointed deputies. (7-1-93)
- 4950. Subscriptions.** The act of nominating to a stake race. (7-1-93)
- 501. Walkover.** When there are not two (2) or more horses of separate interests sent postward. In stake events, unless otherwise specified in the conditions, the entry which appears for the race may walk over the course and be declared the winner and thereby be entitled to the winning percentage of the purse. (7-1-93)
- 542. Weight for Age.** Standard weight according to the scale adopted by the Commission and set forth herein. (7-1-93)
- 523. Weight In.** Post race weight. (7-1-93)
- 534. Weight Out.** Pre race weight. (7-1-93)
- 545. Winner.** Winner of a single race of a certain sum or value unless otherwise expressed in the conditions. (7-1-93)
- 556. Winnings.** Includes all money to the time appointed for the start, and shall apply to all races in any country, and embrace walking over or receiving forfeit, but not second and third money, or the value of any prize not of money or not paid in money. Winnings during the year shall be reckoned from January 1 preceding. (7-1-93)
- 567. Year.** A calendar year. (7-1-93)
- ~~005.—010. (RESERVED).~~

### **010. HORSEMEN’S GROUP.**

For purposes of Section 010, whoever was the recognized horsemen’s group in 2004 is hereby designated as the existing horsemen’s group. ( )

**01. Notice of Intent.** Upon the filing with the Commission of a notice of intent by an alternate horsemen’s group to decertify an existing horsemen’s group, the alternate horsemen’s group shall have not more than six (6) months from the date of filing to acquire, on a petition, signatures of twenty-five percent (25%) of the existing horsemen’s group’s licensed members. ( )

# STATE AFFAIRS COMMITTEE

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## IDAHO STATE POLICE Rules Governing Horse Racing

Docket No. 11-0401-0602  
PENDING RULE

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- a.** Contents of Notice. The notice of intent shall contain the following: ( )
- i.** The name of the alternate horsemen's group; ( )
- ii.** The names of the principals of the horsemen's group; ( )
- iii.** The date of filing; ( )
- iv.** The articles of incorporation and bylaws; and ( )
- v.** A copy of the petition as it will be circulated. ( )
- b.** Petition. No more than one (1) petition by any alternate horsemen's group to decertify an existing horsemen's group shall be circulated at any given time. ( )
- c.** Members. The alternate horsemen's group must, in addition, submit the names of a minimum of fifty (50) members who must be Idaho licensed owners or trainers. ( )
- 02. Validation.** Upon receipt of a petition that meets the criteria set forth above, the Commission shall consider the petition and shall validate the signatures found on said petition. Validation includes, but is not limited to, verification of current Idaho licensed owners and trainers and signature verification. If the validated signatures do not meet the requirements in this Rule, the commission shall notify the alternate and the existing horsemen's groups that no further action shall be taken on the petition. ( )
- 03. Elections.** If the validated signatures are found to meet these requirements, the Commission shall set the date for the election prior to the next regularly scheduled meeting. A representative of the alternate horseman's group shall appear to answer any questions at the meeting validating signatures. The existing horseman's group shall conduct an election among the licensed members. The election results shall be reported to the commission. A deciding vote of fifty percent plus one (50% + 1) of the ballots returned shall be used to determine the one organization to be recognized as the horsemen's group, absent clear and convincing evidence that the election was fraudulent. ( )
- 04. Except for Good Cause.** Except for good cause, the Commissions shall not conduct an election within eighteen (18) months of a prior election among the existing group's licensed members. ( )

# **STATE AFFAIRS COMMITTEE**

## **IDAPA 11 - IDAHO STATE POLICE**

### **RULES OF THE IDAHO STATE RACING COMMISSION**

#### **11.04.01 - RULES GOVERNING HORSE RACING**

**DOCKET NO. 11-0401-0603**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1) Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2506 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rules was published in the September 6, 2006, Idaho Administrative Bulletin, Vol. 06-09, page 73 and 74.**

**FEE SUMMARY:** The following a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** There is no impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker, telephone 208-884-7080.

DATED this 5<sup>th</sup> day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is April 27, 2005.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, Idaho Code.



# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE - STATE RACING COMMISSION**  
**Rules Governing Horse Racing****Docket No. 11-0401-0603**  
**PENDING RULE**

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**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose to the proposed rulemaking:

**Adopt rules regarding bicarbonate testing in racing horses to be uniform with surrounding jurisdictions.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**Bicarbonate or milkshaking has been used to enhance racing horses causing an unfair advantage. The adoption of this temporary rule protects the public health, safety and welfare and confers a benefit to the public and the industry.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted April 27, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7050  
(208) 884-7090 (FAX)

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE - STATE RACING COMMISSION**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0603**  
**PENDING RULE**

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **071. BICARBONATE TESTING.**

**01. No Biocarbonate-Containing Substance or Alkalizing Substance.** No biocarbonate-containing substance or alkalizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall be administered to a horse on race day. (4-27-05)T

**02. Positive Test Level.** Test samples collected from a horse either before or within one (1) hour following a race shall not exceed thirty-seven point zero (37.0) millimoles of total carbon dioxide concentration per liter of serum or plasma. A serum total carbon dioxide level exceeding this value constitutes a positive test. (4-27-05)T

**03. Collection of Test Samples.** The official veterinarian, the board of stewards or the executive director acting on behalf of the commission may at their discretion and at any time order the collection of test samples from any horses ordered to the test barn to determine the serum or plasma pH or concentration of bicarbonate, carbon dioxide, or electrolytes. A sample consisting of at least thirteen (13) ml in a SST tube shall be taken from any horse either just prior to a race or up to one (1) hour after a race to determine the serum total carbon dioxide concentration. If the primary testing laboratory finds that the total carbon dioxide levels in the tubes exceed the standard test values of thirty-seven point zero (37.0) millimoles per liter, this may be grounds for disciplinary action. (4-27-05)T

**04. Split Sample Testing Prohibited.** When taking samples for total carbon dioxide levels, split samples shall be prohibited. The procedures for split sample testing shall not apply to bicarbonate testing procedures. (4-27-05)T

**071. -- 079. (RESERVED).**

# **STATE AFFAIRS COMMITTEE**

## **IDAPA 11 - IDAHO STATE POLICE**

### **RULES OF THE IDAHO STATE RACING COMMISSION**

#### **11.04.01 - RULES GOVERNING HORSE RACING**

**DOCKET NO. 11-0401-0604**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1) Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2506 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rules was published in the September 6, 2006, Idaho Administrative Bulletin, Vol. 06-09, page 75.**

**FEE SUMMARY:** The following a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** There is no impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker, telephone 208-884-7080.

DATED this 5<sup>th</sup> day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is April 27, 2005.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be

# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE - STATE RACING COMMISSION**  
**Rules Governing Horse Racing****Docket No. 11-0401-0604**  
**PENDING RULE**

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scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose to the proposed rulemaking:

**There is a shortage of available jockeys to ride on the fair circuits so there is a need to look for local riders. The local riders weigh more than those who ride continually. The Clerk of Scales will report the correct weight and the announcer will inform the betting public of the correct weights.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**There is a shortage of available jockeys to ride on the fair circuits so there is a need to look for local riders. The local riders weigh more than those who ride continually. The adoption of this temporary rule confers a benefit to the public and the industry.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted April 27, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 8th day of August, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700, Meridian, ID 83680-0700  
(208) 884-7050 / (208) 884-7090 (FAX)

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE - STATE RACING COMMISSION**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0604**  
**PENDING RULE**

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **160. WEIGHTS.**

**01. Carried.** The following weights are carried when they are not stated in the condition of the race: (7-1-93)

**a.** In races of intermediate lengths, the weights for the shorter distance are carried. (7-1-93)

**b.** In all races, except handicaps and races where the conditions expressly state to the contrary, fillies two (2) years-old are allowed three (3) pounds, fillies and mares three (3) years-old and upward are allowed five (5) pounds before the first of September and three (3) thereafter. (7-1-93)

**c.** In all overnight races, except handicaps, not more than six (6) pounds may be deducted from the scale of weight for age, except allowances; but in no case shall the total of allowance of any type reduce the lowest weight below one hundred three (103) pounds, except that this minimum weight need not apply to two (2) year-olds or three (3) year-olds when racing older horses. (7-1-93)

**02. Penalties.** Penalties and allowances of weight are not cumulative unless so declared by the conditions of the race. Horses not entitled to the first weight allowance in a race shall not be entitled to the second and so on. (7-1-93)

**03. Jockey.** Every Jockey must be weighed for a specified horse no more than thirty (30) minutes before the time fixed for the race. (7-1-93)

**04. Jockey Equipment.** A Jockey's weight includes riding clothes, saddle and pad but shall not include the safety helmet or whip. (7-1-93)

**05. Overweight.** If a Jockey intends to carry overweight, the amount thereof must be declared at the time of weighing out or if in doubt as to the proper weight, the weight to be carried may be declared. (7-1-93)

**06. More Than Two Pounds.** If a Jockey intends to carry overweight exceeding by more than two (2) pounds the weight which the horse is to carry, the Trainer consenting, the Jockey must declare the amount of overweight to the Clerk of the Scales at least forty-five (45) minutes before the time appointed for the race and the Clerk shall cause the overweight to be stated on the notice board immediately. Failure on the part of the Jockey to comply with this rule shall be reported to the Stewards. (7-1-93)

**07. No More Than Seven Pounds.** (4-27-05)T

**a.** No horse shall carry more than seven (7) pounds overweight. (7-1-93)

**b.** However, at fair circuit racetracks, horses may carry more than seven (7) pounds

# STATE AFFAIRS COMMITTEE

**IDAHO STATE POLICE - STATE RACING COMMISSION**  
**Rules Governing Horse Racing**

**Docket No. 11-0401-0604**  
**PENDING RULE**

overweight with the permission of the stewards.

(4-27-05)T

**08. Proceeds to Area for Post Race Weigh In.** After a race has been run and after the Jockey has pulled up the horse ridden, the Jockey shall ride promptly to the area designated by the Stewards and their dismount, after obtaining permission from the Judges, and present himself to the Clerk of the Scales to be weighed in. If a Jockey is prevented from riding a mount to the Judges stand because of an accident or an illness either to the Jockey or the horse, the Jockey may walk or be carried to the scales or may be excused by the Stewards by weighing. (7-1-93)

**09. Preparation for Weigh In.** Except by permission of the Stewards, every Jockey must, upon returning to the Placing Judges stand, unsaddle the horse ridden and no person shall touch the Jockey or the horse, except by the bridle, nor cover the horse in any manner until the Jockey has removed the equipment to be weighed. (7-1-93)

**10. Removing Equipment for Weigh In.** No person except by permission of the Stewards shall assist a Jockey in removing from the horse the equipment that is to be included in the Jockey weight. (7-1-93)

**11. Carrying Equipment.** Each Jockey shall in weighing in carry over to the Scales all pieces of equipment with which weighed out. Thereafter, the equipment may be given to the Jockey's attendant. (7-1-93)

**12. Time.** Each Jockey shall weigh in at the same weight as that which he weighed out and, if short of it by more than two (2) pounds, the mount shall be disqualified. (7-1-93)

**13. Fined.** If any Jockey weighs in at more than two (2) pounds over the proper or declared weight, the Jockey shall be fined or suspended or ruled off by the Stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the Commission for such action as it may deem proper. (7-1-93)

**14. Handicap.** The Handicapper or Board of Handicappers shall append to the weight for every handicap the day and hour in which winners will be liable to a penalty and no alteration shall be made after publication except in the case of omission through error of the name or weight of a horse duly entered; in which case, by permission of the Stewards, the omission may be rectified by the Handicapper. (7-1-93)

# **STATE AFFAIRS COMMITTEE**

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 37 and 38.**

**Establish rules regarding simulcast purse money collection and distribution in accordance with Idaho Code 54-2508 and 54-2512 legislative changes.**

**FEE SUMMARY:** The following a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker, telephone 208-884-7080

DATED this 4<sup>th</sup> day of August 4, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is September 13, 2005.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be

# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE  
Rules Governing Simulcasting**

**Docket No. 11-0402-0601  
PENDING RULE**

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scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose to the proposed rulemaking:

**Establish rules regarding simulcast purse money collection and distribution in accordance with Idaho Code 54-2508 and 54-2512 legislative changes.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**To provide the commission with collection and distribution of simulcast purse monies collected from each simulcast operator in this state. The rules would address the problem recently experienced where monies could not be accounted for.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS AND WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7050  
(208) 884-7090 (FAX)



# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE**  
**Rules Governing Simulcasting**

**Docket No. 11-0402-0601**  
**PENDING RULE**

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## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **031. SIMULCAST PURSE MONEY COLLECTION AND DISTRIBUTION.**

**01. Designated Purse Monies.** Each simulcast operator/facility licensed by the racing commission shall remit to the racing commission those monies designated by the horsemen's agreement as purse monies. Payment shall be made on a timely basis as provided in said agreement which shall in no event be greater than thirty (30) days after accrual to the simulcast facility. (9-13-05)T

**02. Dual Signature Insured Account.** Each horsemen's group signatory to a horsemen's agreement authorizing simulcasting shall open and maintain a dual signature insured account, hereinafter called a purse accumulation account. (9-13-05)T

**03. Deposit into Appropriate Account.** The racing commission shall annually, prior to commencement of the live race meet, deposit into the appropriate purse accumulation account those funds paid to the racing commission by the respective simulcast operator(s). The racing commission has the authority to approve more frequent payments if requested by said horseman's group. (9-13-05)T

**04. Sanctions.** In addition to all available sanctions, any person or licensee who receives monies designated as purse monies as described in this rule, and who violates this rule can be ordered to pay a monetary penalty as set forth in Section 54-2509(4), Idaho Code, and daily interest accrued thereupon at the rate set by the Idaho State Treasurer. (9-13-05)T

**034. -- 034. (RESERVED).**

# **STATE AFFAIRS COMMITTEE**

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 39 and 40.**

**Deletes duplicate advance deposit wagering distribution language in rules.**

**FEE SUMMARY:** The following a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker at 208-884-7080.

DATED this 4th day of August 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated regular rulemaking procedures. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE**  
**Rules Governing Simulcasting****Docket No. 11-0402-0602**  
**PENDING RULE**

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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose to the proposed rulemaking: Deletes duplicate advance deposit wagering distribution language in rules.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking. N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS AND WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700, Meridian, ID 83680-0700  
(208) 884-7050 / (208) 884-7090 (FAX)

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **060. DISTRIBUTION OF RECEIPTS FROM MULTI-JURISDICTIONAL SIMULCASTING AND INTERACTIVE WAGERING TOTALIZATOR HUBS.**

**01. Distribution.** From the payments made to the Idaho State Racing Commission by Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hubs, the commission shall: ~~(3-20-04)~~

~~α.~~ ~~R~~receive a source market fee of not less than ten percent (10%) of the handle shall be forwarded monthly to the commission. ~~Distribution of the source market fee shall be:~~ ~~(3-20-04)~~(\_\_\_\_)

# STATE AFFAIRS COMMITTEE

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## IDAHO STATE POLICE Rules Governing Simulcasting

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Docket No. 11-0402-0602  
PENDING RULE

~~i. Forty percent (40%) to purses at all tracks weighted by number of races ran through the year of distribution;~~ (3-20-04)

~~ii. Forty percent (40%) to the simulcast sites in the state weighted by the annual simulcast handle;~~ (3-20-04)

~~iii. Five percent (5%) to the track distribution fund pursuant to Section 54-2513, Idaho Code;~~ (3-20-04)

~~iv. Five percent (5%) to the breed distribution fund pursuant to Section 54-2513, Idaho Code;~~ (3-20-04)

~~v. Five percent (5%) to the Idaho State Racing Commission, and;~~ (3-20-04)

~~vi. Five percent (5%) to the public school income fund pursuant to Section 54-2513, Idaho Code.~~ (3-20-04)

**02. Acceptance of Advance Deposit Wagers.** Account wagers shall be accepted at the time and in the manner designated by the commission. (3-20-04)

**03. Closed Wagering.** Notwithstanding any other rules, the managing employee of the advance deposit wagering center may at any time declare the advance deposit wagering center closed for receiving wagers on any pari-mutuel pool, race, group of races, or closed for all wagering. Anytime the advance deposit wagering center is closed during normal wagering hours by the managing employee a written report must be filed with the commission within forty-eight (48) hours. (3-20-04)

**04. Refuse to Accept.** The advance deposit wagering center has the right at any time and for what it deems good and sufficient reason to refuse to accept all or part of any wager. (3-20-04)

**05. Account Holder Responsibilities.** Accounts are for the personal use of the account holder. The account holder is responsible for maintaining the secrecy of the account number and secure personal identification code. Except where the advance deposit wagering center or its employees or agents act without good faith or fail to exercise ordinary care, the advance deposit wagering center shall not be responsible for any loss arising from the use by any other person or persons of an account holder's account. The account holder must immediately notify the advance deposit wagering center of a breach of the account's security. (3-20-04)

**06. Payments on Winning Pari-Mutuel Wagers.** Payment on winning pari-mutuel wagers and credits for account wagers on entries which are scratched shall be posted to the credit of the account holder as soon as practicable after the race is declared official. (3-20-04)

**07. Written Statements.** The advance deposit wagering center shall, from time to time, but not less than once per year, provide written statements of an individual's account activity during the period to each account holder. In addition, an account holder has the right to request a statement at any time. Unless written notice to the contrary is received by the advance deposit

# STATE AFFAIRS COMMITTEE

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**IDAHO STATE POLICE**  
**Rules Governing Simulcasting**

**Docket No. 11-0402-0602**  
**PENDING RULE**

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wagering center within fourteen (14) days of the date that any statement is sent to an account holder, the statement will be deemed accepted as correct. (3-20-04)

**08. Mailing Address.** The principal residence address provided in writing by the account holder at the time of application is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder. (3-20-04)

**09. Confidential Information.** No employee or agent of the advance deposit wagering center shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the advance deposit wagering center, except to the account holder as required by these rules, the commission, and as otherwise required by state or federal law, or the rules of racing of this state. (3-20-04)

# **STATE AFFAIRS COMMITTEE**

## **IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION**

### **31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION**

**DOCKET NO. 31-1101-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Commission and is now pending review by the 2007 State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Commission has adopted a pending rule. The action is authorized pursuant to Sections 61-515, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 428 and 429.**

**FISCAL IMPACT:** There is no fiscal impact on the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

DATED this 3rd day of November, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 61-515, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006. The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the Commission's address below.

# STATE AFFAIRS COMMITTEE

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**IDAHO PUBLIC UTILITIES COMMISSION**  
**Safety and Accident Reporting Rules for Utilities**

**Docket No. 31-1101-0601**  
**PENDING RULE**

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**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Commission's Safety and Accident Reporting Rules currently adopt by reference several national safety codes and federal safety regulations. In particular, Rule 101 currently adopts by reference the 2002 Edition of the National Electrical Safety Code (NESC) published by the Institute of Electrical and Electronics Engineers. The Commission is proposing to amend Rule 101 by adopting the 2007 Edition of the NESC. The major revisions included in the 2007 Edition are: steel pole grounding; moving line sag calculations to Section 23; phasing out the alternative method for calculating load factors and strength factors; requiring the same uniform radial separation (twelve (12) inches) for supply and communication cables from all lines that transport flammable materials; requiring phase-to-phase cover-up when guarding against phase-to-phase contact; and including minimum approach distance tables.

**FEE SUMMARY:** There are no fees associated with this proposed rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on the state general fund resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule adopts an updated national safety code necessary for the safety of utility employees and the public during the installation, operation, or maintenance of electric supply and communication lines and associated equipment.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 25, 2006.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 17th day of August, 2006.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762

Street address for express delivery:  
472 W Washington  
Boise, Idaho 83702-5983

# STATE AFFAIRS COMMITTEE

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**IDAHO PUBLIC UTILITIES COMMISSION**  
**Safety and Accident Reporting Rules for Utilities**

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**Docket No. 31-1101-0601**  
**PENDING RULE**

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (RULE 101).**

The Commission adopts by reference the American National Standards Institute (ANSI) C2-2002 National Electrical Safety Code (NESC), 2002~~7~~ Edition. The National Electrical Safety Code, 2002~~7~~ Edition, is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997 and may be ordered by calling 1-800-678-IEEE. All electrical and telephone corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of the NESC.

(~~5-3-03~~)(    )



# **STATE AFFAIRS COMMITTEE**

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.06 - RULES GOVERNING PREQUALIFICATION OF CONTRACTORS ON CAPITOL BUILDING PROJECTS**

**DOCKET NO. 38-0406-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5711C(4), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**In the 2005 Legislative session, Idaho Code Section 67-5711C was amended to allow for prequalification. As amended, Section 67-5711C allows for rules regarding prequalification. In the 2006 Legislative session, the Legislature authorized the restoration and expansion of the capitol building. These rules on prequalification will help ensure contractors working on the capitol building have the required skills and experience for the work.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 91 through 95.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Joanna L. Guilfooy, Deputy Attorney General, Department of Administration, at (208) 332-1832.

DATED this 17th day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2006.

# STATE AFFAIRS COMMITTEE

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**DEPARTMENT OF ADMINISTRATION****Docket No. 38-0406-0601****Prequalification of Contractors on Capitol Building Projects****PENDING RULE**

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**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-5711C(4), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: In the 2005 Legislative session, Section 67-5711C, Idaho Code, was amended to allow for prequalification. As amended, Section 67-5711C, Idaho Code, allows for rules regarding prequalification. In the 2006 Legislative session, the Legislature authorized the restoration and expansion of the capitol building. These rules on prequalification will help ensure contractors working on the capitol building have the required skills and experience for the work.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Promulgation of rules on prequalification of contractors who work on the capitol building is necessary to protect the public health, safety or welfare and will confer a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the substance and nature of the rules does not warrant negotiated rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, Department of Administration, at (208) 332-1832.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 26th day of June, 2006.

# STATE AFFAIRS COMMITTEE

**DEPARTMENT OF ADMINISTRATION**

**Prequalification of Contractors on Capitol Building Projects**

**Docket No. 38-0406-0601**

**PENDING RULE**

Joanna L. Guilfooy  
Deputy Attorney General  
Department of Administration  
650 W. State Street  
P.O. Box 83720, Boise, Idaho 83720-0003  
Telephone: (208) 332-1832 / Fax: (208) 334-2307

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### ***IDAPA 38 TITLE 04 CHAPTER 06***

#### ***38.04.06 - RULES GOVERNING PREQUALIFICATION OF CONTRACTORS ON CAPITOL BUILDING PROJECTS***

##### **000. LEGAL AUTHORITY.**

The following rules are promulgated in accordance with Section 67-5711C(4), Idaho Code.

(7-1-06)T

##### **001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.06, "Rules Governing Prequalification of Contractors on Capitol Building Projects."

(7-1-06)T

**02. Scope.** Pursuant to Section 67-5711C(4), Idaho Code, contractors may be required to be prequalified to submit a competitive sealed bid to the Division of Public Works under Section 67-5711C, Idaho Code. These rules govern the prequalification process.

(7-1-06)T

##### **002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. Any such documents are available for public inspection and copying at the office of this agency.

(7-1-06)T

##### **003. ADMINISTRATIVE APPEALS.**

The provisions found in Sections 031 through 045 of these rules shall govern administrative appeals on prequalification.

(7-1-06)T

##### **004. EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.**

Pursuant to Section 67-5206(5), Idaho Code, except as provided in these rules, the procedures contained in Subchapter B, "Contested Cases," of the rules promulgated by the Attorney General

# STATE AFFAIRS COMMITTEE

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**DEPARTMENT OF ADMINISTRATION****Docket No. 38-0406-0601****Prequalification of Contractors on Capitol Building Projects****PENDING RULE**

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as IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 100 through 799, do not apply to prequalification determination appeals. (7-1-06)T

**005. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.**

To prevent unnecessary delays and increased costs in the capitol restoration and expansion construction project, the rules of procedure in this chapter are adopted to promote the speedy resolution of prequalification determinations. (7-1-06)T

**006. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. (7-1-06)T

**007. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS.**

The Division of Public Works is located at 502 N. 4th Street, Boise, Idaho, 83720-0072. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0072. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. (7-1-06)T

**008. PUBLIC RECORDS ACT COMPLIANCE.**

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 9, Chapter 3, Idaho Code). (7-1-06)T

**009. -- 010. (RESERVED).****011. DEFINITIONS.**

**01. Administrator.** The administrator of the Division of Public Works. (7-1-06)T

**02. Contractor.** The person or entity seeking prequalification under these rules. (7-1-06)T

**03. Director.** The director of the Department of Administration. (7-1-06)T

**04. Restoration.** All work done to restore, renovate, refurbish, repair, modernize, improve, expand, update or upgrade the existing capitol building. (7-1-06)T

**012. -- 015. (RESERVED).****016. PREQUALIFICATION.**

With respect to any contract to be entered for any capitol building restoration project or projects, and any part thereof, when it is deemed to be in the best interest of the state, the Administrator may require any or all contractors, including general, prime, specialty or subcontractors, to be prequalified. If prequalification is used, the following conditions shall apply: (7-1-06)T

**01. License.** Only contractors properly licensed in Idaho to perform public works' contracts shall be eligible for prequalification. (7-1-06)T

**02. Notice of Prequalification.** Notice of the prequalification requirement shall be given in the same manner that notice of open competitive bidding is provided. Notice must

# STATE AFFAIRS COMMITTEE

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**DEPARTMENT OF ADMINISTRATION****Prequalification of Contractors on Capitol Building Projects****Docket No. 38-0406-0601****PENDING RULE**

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describe criteria to be used to evaluate contractors for prequalification.

(7-1-06)T

**03. Criteria for Prequalification.** The Administrator shall establish the procedures to be used for prequalification and the minimum criteria for prequalification. The criteria shall be relevant to the contractor's abilities to perform under a contract, its competence, experience, resources and performance history, and may address, but not be limited to, the following areas:

(7-1-06)T

**a.** Financial status;

(7-1-06)T

**b.** Prior experience with the state and on other public works or private sector construction projects, including but not limited to the size, complexity and scope, and timely performance of the firm's prior projects;

(7-1-06)T

**c.** Reviews of previous public works or private sector construction projects within the last ten (10) years;

(7-1-06)T

**d.** Overall performance history based on the contractor's entire body of work;

(7-1-06)T

**e.** References;

(7-1-06)T

**f.** Civil judgments and criminal history of the contractor and its principals;

(7-1-06)T

**g.** Any debarment or suspension by any government agency;

(7-1-06)T

**h.** Any revocation or suspension of a license;

(7-1-06)T

**i.** Any bankruptcy filings or proceedings; and

(7-1-06)T

**j.** Organization, including resumes of the management, key personnel and professional staff.

(7-1-06)T

**04. Minimum Score.** The prequalification criteria may provide for submissions to be scored numerically and require a minimum score be attained for prequalification.

(7-1-06)T

**05. Statement Under Oath.** The Division of Public Works may require a statement under oath regarding the financial ability, responsibility, available nonfinancial resources, equipment, personnel, organization, ownership, relationships, prior experience and any other facts as may be deemed necessary.

(7-1-06)T

**06. Independent Inquiries.** In addition to consideration of the submission by the contractor in the prequalification process, the Division of Public Works may conduct independent inquiries relevant to a contractor's ability, competence, experience, resources and performance history, including contacting regulatory agencies and prior clients or customers, and the results of such may be considered in the prequalification determination.

(7-1-06)T

# STATE AFFAIRS COMMITTEE

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**DEPARTMENT OF ADMINISTRATION****Docket No. 38-0406-0601****Prequalification of Contractors on Capitol Building Projects****PENDING RULE**

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**07. Prequalification Review Committee.** The Administrator may establish a prequalification review committee to review contractor submissions and make a non-binding recommendation to the Administrator on prequalification. (7-1-06)T

**08. Prequalification Determinations.** Prequalification determinations shall be made by the Administrator or his designee based on the established criteria. Contractors shall be notified in writing of the prequalification determinations. Any contractor denied prequalification shall be informed of the basis for such denial. (7-1-06)T

**09. Competitive Sealed Bidding.** Competitive sealed bidding among only those prequalified to bid shall then be accomplished under, and award shall be made, to the lowest responsive and responsible bidder in accordance with Section 67-5711C, Idaho Code. (7-1-06)T

**017. -- 030. (RESERVED).**

**031. APPEALS OF PREQUALIFICATION DETERMINATIONS.**

The following rules apply to appeals of prequalification determinations. (7-1-06)T

**032. FILING OF APPEAL.**

The notice of appeal must be in writing, signed by the disqualified contractor or his representative, and must be received at the office of the Director, 650 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0003, no later than seven (7) days from the date the notice of disqualification was given. The notice must explain in detail why the prequalification determination is considered erroneous. (7-1-06)T

**033. HEARING OFFICER.**

The Director shall appoint a hearing officer to conduct a contested case hearing in accordance with Chapter 52, Title 67, Idaho Code. (7-1-06)T

**034. NOTICE OF HEARING.**

A notice of hearing shall be provided to the disqualified contractor, giving at least ten (10) days' advance notice of the hearing. The hearing will be held in Ada County, at such place as may be designated in the hearing notice. Upon concurrence of the parties and the hearing officer, hearings may be conducted telephonically. (7-1-06)T

**035. BRIEFS AND MEMORANDA.**

Any party may make a request in writing to the hearing officer to file briefs, memoranda, proposed orders or statements of position and the hearing officer shall grant or deny such request as the hearing officer deems appropriate under the circumstances of a particular case. The hearing officer may request briefs, memoranda, proposed orders or statements of position. (7-1-06)T

**036. RULES OF EVIDENCE.**

The hearing officer shall control the hearing and direct the order or presentation. A party shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceedings. (7-1-06)T

**037. ADMISSION OF EVIDENCE.**

The admission of evidence at hearings shall be governed by Sections 600 through 609 of the

# STATE AFFAIRS COMMITTEE

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**DEPARTMENT OF ADMINISTRATION****Docket No. 38-0406-0601****Prequalification of Contractors on Capitol Building Projects****PENDING RULE**

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IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-06)T

**038. TESTIMONY.**

Testimony to be considered by the hearing officer in the hearing shall be by sworn testimony, except for matters noticed or entered by stipulation. (7-1-06)T

**039. DISCOVERY.**

Discovery may be conducted in the manner and to the extent allowed by the Idaho Rules of Civil Procedure only if first formally agreed to by the parties, or by order of the hearing officer after an application has been filed and a showing that discovery is required to clarify issues, identify witnesses or preserve testimony. The order may limit the scope of discovery and the method of discovery as the hearing officer deems appropriate under the circumstances of a particular case. (7-1-06)T

**040. RECORDING AND TRANSCRIPTION.**

The hearing will be recorded by electrical device. A written transcript will be produced by the department upon request of either party. A disqualified contractor requesting such transcript shall be responsible for the cost of the transcript. Any party wishing to have the hearing recorded by a qualified court reporter must request such no less than five (5) business days in advance of the date set for hearing. The requesting party shall pay the cost of the reporter's fees and shall provide a copy to the hearing officer. The non-requesting party may pay for an additional copy for its own use. (7-1-06)T

**041. WITNESSES AND EVIDENCE.**

The hearing officer, on its own or upon application of the disqualified contractor or the Department of Administration, may issue subpoenas for the attendance of witnesses and production of documents. (7-1-06)T

**042. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

Once the matter is fully submitted, the hearing officer shall issue findings of fact, conclusions of law and preliminary order. The hearing officer shall uphold the Administrator's prequalification determination unless he finds it arbitrary, capricious or an abuse of discretion. Copies shall be provided to all parties. (7-1-06)T

**043. FINAL ORDER.**

Upon receipt thereof, the Director shall issue a final order, affirming, modifying or reversing the original prequalification determination. Copies shall be provided to all parties. (7-1-06)T

**044. MOTIONS FOR RECONSIDERATION.**

Motions for reconsideration of the hearing officer's preliminary order or of the Director's final order are not allowed. (7-1-06)T

**045. APPEALS.**

Appeals from the final order shall be taken in accordance with Section 67-5270, Idaho Code. (7-1-06)T

**046. -- 999. (RESERVED).**

# **STATE AFFAIRS COMMITTEE**

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**DEPARTMENT OF ADMINISTRATION**

**Docket No. 38-0406-0601**

**Prequalification of Contractors on Capitol Building Projects**

**PENDING RULE**

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